

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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UNITED STATES OF AMERICA,

Plaintiff,

v.

CARRIE WHEATON,

Defendant.  
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ORDER

08-cr-34-bbc

12-cv-620-bbc

On September 20, 2012 I denied defendant Carrie Wheaton's motion for post conviction relief under 28 U.S.C. § 2255 for her failure to show that either her conviction or sentence is illegal. In the same order, I also denied the issuance of certificate of appealability under the newly effective amendments to Rule 11 of the Rules Government Section 2255 Cases in the United States District Courts.

Now defendant has filed a notice of appeal from the September 20, 2012 order denying her post conviction motion under 28 U.S.C. § 2255. Her notice of appeal was not accompanied by the \$455 fee for filing an appeal. 28 U.S.C. § 2253(c)(1)(A); Fed. R. App. P. 22. Therefore, I construe it as including a request for leave to proceed in forma pauperis on appeal pursuant to 28 U.S.C. § 1915.

According to 28 U.S.C. § 1915(a), a defendant who is found eligible for court-appointed counsel in the district court proceedings may proceed on appeal in forma pauperis without further authorization “unless the district court shall certify that the appeal is not taken in good faith or shall find that the party is otherwise not entitled so to proceed.” Defendant had appointed counsel during the criminal proceedings against her and I do not intend to certify that the appeal is not taken in good faith. Defendant’s challenge to her sentence is not wholly frivolous. A reasonable person could suppose that it has some merit. Lee v. Clinton, 209 F.3d 1025, 1026 (7th Cir. 2000).

ORDER

IT IS ORDERED that defendant Carrie Wheaton’s request for leave to proceed in forma pauperis on appeal is GRANTED.

Entered this 1st day of October, 2012.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge